



NEWS

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SUMMARY OF CASES ACCEPTED DURING THE WEEK OF SEPTEMBER 29, 2003

[This news release is issued to inform the public and the press of cases that the Supreme Court has accepted and of their general subject matter. The description or descriptions set out below do not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.]

#03-124 Barratt American, Inc. v. City of Rancho Cucamonga, S117590. (E032578; 109 Cal.App.4th 709; San Bernardino County Superior Court; RCV063382.) Petition for review after the Court of Appeal affirmed the judgment in a proceeding for writ of administrative mandate. This case includes the following issues: (1) What remedies are available when a local government imposes building permit and plan review fees in excess of the amount permitted under the provisions of the Mitigation Fee Act (Gov. Code, §§ 66000-66024)? (2) In this case, are all of petitioner's claims barred by the 120-day statute of limitations set forth in Government Code section 66022?

#03-125 People v. Chacon, S117879. (F038393; 109 Cal.App.4th 1537; Kern County Superior Court; 80653.) Petition for review after the Court of Appeal remanded for redetermination of sentence and otherwise affirmed a judgment of conviction of criminal offenses.

#03-126 People v. Thomas, S118052. (F037501; 109 Cal.App.4th 1520; Kern County Superior Court; 81072.) Petition for review after the Court of Appeal remanded for redetermination of sentence and otherwise affirmed a judgment of conviction of criminal offenses.

Chacon and Thomas both include the following issue: When the prosecution files a criminal proceeding against a juvenile offender in adult court under the provisions of

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the Gang Violence and Juvenile Crime Prevention Initiative (Prop. 21, Primary Elec. (Mar. 7, 2000)), and the juvenile is convicted of an offense listed in Welfare and Institutions Code section 1732.6, subdivision (b), does a trial court have the authority to order a juvenile disposition other than a commitment to the California Youth Authority? In Chacon, the court's order also directed the parties to brief the following issue: Does a trial court's discretion to order a juvenile disposition under Penal Code section 1170.19, subdivision (a)(4), apply in a case in which a state prison sentence is mandated by the provisions of the Gang Violence and Juvenile Crime Prevention Initiative (Prop. 21, Primary Elec. (Mar. 7, 2000)) and, if so, does the requirement under Penal Code section 1170.19, subdivision (a)(4), to obtain the prosecutor's consent violate the separation of powers doctrine?

#03-127 City of Long Beach v. Department of Industrial Relations, S118450. (B159333; 110 Cal.App.4th 636; Los Angeles County Superior Court; BS072516.) Petition for review after the Court of Appeal reversed the judgment in an action for writ of administrative mandate. This case includes the following issue: Does the prevailing wage law (Lab. Code, §§ 1720-1861), which requires a contractor who performs work on any "public work" within the state to pay prevailing wages to its employees, involve "a matter of statewide concern" so that the statute is applicable to a public works project in a charter city, even if the construction of the project would otherwise involve a "municipal affair"? (See City of Pasadena v. Charleville (1932) 215 Cal. 384.)

#03-128 City of Marina v. Bd. of Trustees of the California State Univ., S117816. (H023158; 109 Cal.App.4th 1179, mod. 110 Cal.App.4th 1114a; Monterey County Superior Court; M41795, M41781.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case includes the following issue: When a public agency has proposed and designed a public project, does the agency's exemption from taxation (Cal. Const., art. XIII, § 3) and from special assessments without legislative approval (San Marcos Water Dist. v. San Marcos Unified School Dist. (1986) 42 Cal.3d 154) preclude requiring the agency to agree to provide funds to mitigate the environmental impacts that are identified in the environmental impact report prepared for the proposed project?

#03-129 Kirkeby v. Superior Court, S117640. (G031262; Orange County

Superior Court; 109 Cal.App.4th 1275; 01CC09667.) Petition for review after the Court of Appeal denied a petition for peremptory writ of mandate. This case presents the following issue: Does a cause of action to set aside a fraudulent conveyance affect the title to or right to possession of real property, so as to permit the recording of a notice of lis pendens?

#03-130 People v. Robertson, S118034. (A0095055; 109 Cal.App.4th 1740; Alameda County Superior Court; C135605.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. This case includes the following issue: Can the felony offense of discharging a firearm in a grossly negligent manner (Pen. Code, § 246.3) support a conviction for second degree murder on a felony-murder theory, or is such a conviction barred by the merger doctrine? (See People v. Ireland (1969) 70 Cal.2d 522; People v. Hansen (1994) 9 Cal.4th 300.)

#03-131 People v. Valdez, S117778. (C036614, C037039; 109 Cal.App.4th 1414; San Joaquin County Superior Court; SF074536A, SF074536B.) Petition for review after the Court of Appeal affirmed in part and reversed in part judgments of conviction of criminal offenses. The Court ordered briefing deferred pending decision in People v. Taylor, S112443 (#03-28), which presents the following issue: Must a defendant know that a woman is pregnant before the defendant can be convicted of the implied malice murder of her fetus, or may such a conviction be based simply on the defendant's conscious disregard of the risk his or her conduct poses to human life in general, at least in the context of a mother and her unborn child?

STATUS

#01-134 Aguilar v. Lerner, S099667. The court limited review to the following issues: (1) Do California's Mandatory Fee Arbitration (MFA) statutes preempt a binding attorney fee arbitration clause in an attorney-client fee agreement entered into before a dispute arose between the attorney and client? (2) Can a client waive his right to a trial de novo after arbitration by prospectively agreeing to binding arbitration of an attorney-client fee dispute before the fee dispute arises. (3) Is a client estopped from asserting a right under the MFA not to be bound by a predispute arbitration agreement because he filed a malpractice action against the attorney and consistently maintained that he did not want arbitration?

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